

REMARKS

Applicants request reconsideration of the present application in light of the amendments and remarks submitted herein.

Claims 1, 2, 6-8, 10, 11, 14, 28-30, 32-36, 38-41, 43, 44, 46-48, and 50-55 are pending in this application. Claims 1, 28, 32, 38, 47, and 48 have been amended.

Claims 1, 2, 6-8, 10, 11, 14, 28-30, 32-36, 38-41, 43, 44, 46-48, and 50-55 were rejected in the Office Action mailed July 23, 2010. While applicants disagree with the grounds of the rejection cited in the Office Action, in order to advance prosecution of the present application, clarifying amendments have been entered.

Applicants submit that the present application is now in condition for allowance. Accordingly, reconsideration and allowance of all pending claims are respectfully requested.

Interview Summary

Applicants thank Examiners Helvey and Newhouse for the time and courtesy extended in a telephone interview conducted with the undersigned representative on January 5, 2011. During the interview, some of the cited references (Hovland, Makowka, and Stude) were discussed. In addition, potential claims amendments were discussed.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1, 2, 6-8, 10, 11, 14, 28-30, 32-36, 38, 43, 44, 46-48, and 50-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4834552, issued to Makowka (hereinafter "Makowka"), in view of U.S. Patent No. 3265287, issued to Hovland (hereinafter "Hovland"), and U.S. Patent No. 5,738,274, issued to Stude (hereinafter "Stude"). In addition, Claim 41 stands rejected as being unpatentable over Makowka in view of Hovland, Stude and U.S. Patent No. 4607749, issued to Jacob (hereinafter "Jacob").

To establish a *prima facie* case of obviousness, the cited prior art references must teach or suggest all of the claim elements. In addition, there must be some apparent reason, either in the references or in the knowledge of one skilled in the art, to modify the reference or to combine the elements of multiple references with a reasonable expectation of success.

Makowka is generally directed to a tamper-evident seal for an envelope and a method of making the same. The Examiner cites Makowka as teaching an envelope having a cavity and a flap closure formed from polyethylene film.

Hovland is generally directed to a hermetically sealed cigarette package with an opening feature. Referring to Figures 1 and 2, the package is made from a composite multi-ply material which has a line of weakness, preferably a line of perforations 2 passing through the exterior layer, but not through all of the plies of the material. The multi-ply material has a plurality of layers of paper and a plurality of layers of polymeric resin plies. As seen in Figure 2, the outer perforated layer of the wrapper includes a paper layer 11 having a coating 10 of polyethylene. The inner imperforate layer of the wrapper includes a layer of polyethylene 12 adhered to the inner side of the paper layer 11, a thin coating of wax 13 on the inner polyethylene layer 12, another polyethylene layer 14, and another layer of paper 15.

Stude is cited as purportedly teaching more than two rows or lines of areas of reduced thickness extending along the flap and a pair of nicks at either end of the flap.

Jacob is cited as purportedly teaching an array of cut score lines (instead of perforations) such that a wall of the paper envelope may be torn in a controlled manner.

Claims 28, 32, 47, and 48

Claims 28 is generally directed to a tearable closure for opening a sealed container. The tearable closure includes at least first and second films bonded together, wherein the first and second films are polymer films. The first film faces the interior of the sealed container and

including at least two rows of perforations or score lines that extend through the thickness of the first film across the tearable closure, and the second film facing the exterior of the sealed container and being a continuous film material.

Claim 32 is directed to a container with a tearable closure. The container includes a container body defining a cavity, and a tearable closure connected to the container body comprising a polymer film. The tearable closure is positionable in open or closed orientations. The tearable closure has first and second sides and a thickness extending therethrough, wherein the first side has at least two score lines that extend through a portion of the thickness of the film and the second side does not include score lines. The first side is an inner side when the closure is positioned in the closed orientation.

Claims 47 is generally directed to a tearable opening for a sealed container including a polymer film having first and second sides and a thickness, the first side having at least two rows of score lines that extend through a portion of the thickness and the second side not having score lines. The film is a continuous film of homogeneous composition, such that when the container is sealed the first side is oriented toward the interior of the container and the second side is oriented toward the exterior of the container.

The Office Action argues that because Hovland teaches perforations on the exterior layer of cigarette packaging and a continuous (unperforated) layer on the interior layer of the cigarette packaging, it would have been obvious to one having ordinary skill in the art at the time the invention was made to put the perforations on the interior side of the tearable closure of the present application in order to provide a smooth exterior surface. The Office Action cites *In re Einstein*, 8 U.S.P.Q. 166 (C.C.P.A. 1931) for the proposition that a mere reversal of the essential working parts of a device involves only routine skill in the art.

Applicants respectfully disagree with the position that the placement of the perforations on the interior surface of the tearable closure is a mere reversal of parts that only involves routine skill in the art, like the reversal of parts in the cited case. *In re Einstein* concerns an applicant's appeal of rejected claims that were directed to an improved grinder wheel oscillator. The applicant's grinder wheel oscillator transposed various elements from a prior art device so as to create a more compact device that occupied less space. The court held that compactness of size alone does not constitute invention.

In contrast to transposing known elements, as was the case in Einstein's patent application, the applicants in the present application have invented a significant advancement in plastic packaging technology -- i.e., a plastic package, container, or envelope with significantly improved robustness and integrity. As described in the background section of the application, previously designed plastic packages usually have a closure flap that seals the package. The closure flap may be openable along a perforated section that includes two rows of perforations that completely penetrate the closure flap. Therefore, the perforations are visible and exposed on an exterior side of the closure flap. While convenient for opening packages, exposed perforations create a serious risk that the package might inadvertently be opened, for example, while in transit.

As recited in Claims 28, 32, 47, and 48, a closure (or opening) for a container has perforations or score lines on an *interior side* of the closure and a continuous film on an exterior side of the closure. Because the perforations or score lines are not on the exterior side of the closure, there is a significantly reduced risk that the closure will inadvertently be opened, for example, while in transit.

As discussed above, Hovland teaches perforations on the *exterior side* of the packaging for a completely different purpose, ease of opening a cigarette package. As described in

Hovland at Col. 3, lines 16-21, with reference to Figure 6, "opening of the package can easily be begun by grasping the corner of flap 25 adjacent flap 33 and pulling upward and away from side panel 22 toward panel 20. The package can be opened by continuing to tear the same along the line of perforations."

Interestingly, the placement of the perforations in Hovland confirms that one of ordinary skill in the art would not have put the perforations on the interior side of a tearable closure for a package because Hovland did not develop a package with perforations on the interior side. While cigarette packages arguably do not require the security and integrity required in mailing containers and packages, there is still a risk that the packaging will be inadvertently opened because of the exterior placement of the perforations by Hovland.

For at least these reasons, applicants respectfully submit that Claims 28, 32, 47, and 48 and the claims depending therefrom are not obvious in view of the cited references. Accordingly, applicants respectfully request withdrawal of the claim rejections.

Claim 38

Claim 38 is generally directed to a container having a container body defining a cavity and a tearable flap connected to the container body, wherein the flap comprises an inner translucent film and an outer opaque film. The inner translucent film has perforations that extend completely through the thickness of the inner translucent film and the outer opaque film does not have perforations. The inner film includes at least two rows of perforations extending from length's end to length's end of the flap, wherein the inner film is oriented towards the cavity when the container is closed. The flap is a plastic film that does not include areas made of fibers.

As discussed above, Hovland teaches a multi-ply material having a plurality of layers of paper and a plurality of layers of polymeric resin plies. Hovland fails to teach or suggest a flap

or closure for a container having perforations on the inner film, wherein the flap or closure is made from a plastic or polymer film that does not include areas made of fibers.

For at least this reason, in addition to the reasons discussed above with reference to Claims 28, 32, 47, and 48, applicants respectfully submit that Claim 38 and the claims depending therefrom is not obvious in view of the cited references. Accordingly, applicants respectfully request withdrawal of the claim rejections.

Claim 1

Claim 1 is generally directed to a container including a container body defining a cavity and a tearable flap connected to the container body, the flap being positionable in open and closed orientations. The flap includes a first side having more than two rows or lines of areas of reduced thickness extending approximately from length's end to length's end of the flap and a pair of nicks at either end of the flap, wherein the nick ends are within the boundaries of at least the outermost rows or lines of areas of reduced thickness, extend at least partially between at least two rows or lines, and intersect at least one row or line. The flap includes a second side having a continuous film material, wherein the flap is a plastic film, such that when the flap is positioned in the closed orientation the first side is an inner side and the second side is an exterior side.

As mentioned above, Stude is cited as purported teaching more than two rows or lines of areas of reduced thickness extending along the flap and a pair of nicks at either end of the flap. Stude fails to teach or suggest that the nick ends are within the boundaries of at least the outermost rows or lines of areas of reduced thickness, extend at least partially between at least two rows or lines, and intersect at least one row or line, as recited in amended Claim 1.

For at least this reason, in addition to the reasons discussed above with reference to Claims 28, 32, 47, and 48, applicants respectfully submit that Claim 1 and the claims depending

therefrom is not obvious in view of the cited references. Accordingly, applicants respectfully request withdrawal of the claim rejections.

CONCLUSION

In view of the foregoing amendments and remarks, applicant submits that the application is in condition for allowance. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to contact the undersigned representative.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Emily C. Peyser
Registration No. 59,844
Direct Dial No. 206.695.1634

ECP:tl

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100